

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL P. PEAKE,

Plaintiff/Counterdefendant/
Appellant,

v

CAROL D. PEAKE,

Defendant/Counterplaintiff/
Appellee.

UNPUBLISHED

March 13, 2003

No. 234152

Oakland Circuit Court

LC No. 00-639724-DO

Before: White, P.J., and Kelly and R.S. Gribbs*, JJ.

WHITE, P.J. (*concurring*).

On February 20, 2001, the date set for trial, plaintiff's counsel represented that he had given plaintiff notice of the trial date and the fact that a counter-claim had been filed, but that plaintiff failed to communicate with counsel and provide direction to him. The Court did not err in proceeding to enter a default judgment of divorce on the counterclaim. Although counsel for plaintiff was present, no answer to the counterclaim had been filed, and plaintiff had not appeared for trial. Plaintiff's counsel was permitted to argue on the issue of the property distribution and, in fact, argued that the business evaluation was stale. When plaintiff was granted an evidentiary hearing for the purpose of supporting his allegations that he did not have notice of the February 20 trial date, or that he was confused in light of other notices received, or that he relied on his attorney to protect his rights, or that he had no notice of the counterclaim and therefore could not have instructed his attorney to file an answer, or that he had made numerous phone calls to counsel, which were never returned, and counsel had not called him, or that the property division provisions were unfair, he declined the opportunity to present such evidence. Under these circumstances, I agree that the default judgment should be affirmed. I also agree that plaintiff's ancillary arguments have no merit.

/s/ Helene N. White

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.